

## **BILL ANALYSIS**

Senate Research Center  
83R20001 SCL-F

H.B. 1325  
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State Affairs  
4/26/2013  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Current law sets out procedures for civil actions arising from exposure to asbestos and silica. Interested parties express concern that under current procedures, scarce judicial and litigant resources are being misdirected by the claims of individuals who have been exposed to asbestos or silica but have no functional or physical impairments from asbestos-related or silica-related diseases. H.B. 1325 seeks to prevent such a misdirection of resources and allow the multidistrict litigation pretrial courts that hear such cases to better manage their dockets by providing for the dismissal of certain asbestos-related and silica-related actions that are pending in those courts.

H.B. 1325 amends current law relating to the dismissal of certain actions arising from exposure to asbestos and silica.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Section 90.007, Civil Practice and Remedies Code, to read as follows:

Sec. 90.007. MOTION TO DISMISS IN ACTION FILED ON OR AFTER SEPTEMBER 1, 2005.

SECTION 2. Amends Section 90.007(a), Civil Practice and Remedies Code, to authorize a defendant to file a motion to dismiss the claimant's asbestos-related claims or silica-related claims in an action filed on or after September 1, 2005, rather than in an action filed on or after the date this chapter (Claims Involving Asbestos and Silica) becomes law, if a claimant fails to timely serve a report on a defendant, or serves on the defendant a report that does not comply with the requirements of Section 90.003 (Reports Required for Claims Involving Asbestos-Related Injury) or 90.004 (Reports Required for Claims Involving Silica-Related Injury).

SECTION 3. Amends Section 90.010, Civil Practice and Remedies Code, by amending Subsection (d) and adding Subsections (d-1), (l), (m), (n), and (o), as follows:

(d) Prohibits the district court to which related cases are transferred for consolidated or coordinated pretrial proceedings under Rule 13, Texas Rules of Judicial Administration (MDL pretrial court), in an action that was pending on August 31, 2005, that was transferred to and remains pending in an MDL pretrial court, from remanding such action for trial unless:

- (1) the claimant serves a report complying with Section 90.003 or 90.004; or
- (2) (A) the claimant does not serve a report that complies with Section 90.003 or 90.004;

(B) the claimant serves a report complying with Subsection (f)(1) (relating to requiring the claimant to serve on each defendant a certain report); and

(C) the court, on motion and hearing, makes the findings required by Subsection (f)(2) (relating to requiring the MDL pretrial court to determine whether the report and medical opinions offered by the claimant are credible and reliable, certain medical criteria is adequate to assess the exposed person's physical impairment caused by exposure to asbestos or silica, and the claimant has produced sufficient credible evidence for a finder of fact to reasonably find that the exposed person is physically impaired due to a certain degree of exposure to asbestos or silica).

Deletes existing text prohibiting the MDL pretrial court in an action pending on the date this chapter becomes law that is transferred to or pending in an MDL pretrial court and in which the claimant does not serve a report that complies with Section 90.003 or 90.004, from dismissing the action pursuant to this chapter and requiring the MDL pretrial court to retain jurisdiction over the action under the MDL rules.

(d-1) Requires the MDL pretrial court, beginning on September 1, 2014, to dismiss each action for an asbestos-related injury or a silica-related injury that was pending on August 31, 2005, unless a report was served on or after September 1, 2013, that complies with Section 90.003, Section 90.004, or Subsection (f) (relating to requirements of the claimant and the MDL pretrial court in an action in which the claimant seeks remand for trial under Subsection (d)(2) or denial of a motion to dismiss under Subsection (e)). Requires the MDL pretrial court to provide for the dismissal of such actions in a case management order entered for that purpose. Requires that all such actions be dismissed on or before August 31, 2015.

(l) Provides that a dismissal under Subsection (d-1) is without prejudice to the claimant's right to file a subsequent action seeking damages arising from an asbestos-related injury or a silica-related injury.

(m) Provides that this chapter and Section 16.0031 (Asbestos-Related or Silica-Related Injuries) apply to a subsequent action for an asbestos-related injury or a silica-related injury filed by a claimant whose action was dismissed under Subsection (d-1) or by a claimant in an action described by Subsection (d) who voluntarily dismissed the action under Section 90.008 (Voluntary Dismissal).

(n) Provides that if a claimant subsequently refiles an action for an asbestos-related injury or a silica-related injury that was dismissed under Subsection (d-1), the refiled action is treated for purposes of determining the applicable law as if that claimant's action had never been dismissed but, instead, had remained pending until the claimant served a report that complied with Section 90.003, Section 90.004, or Subsection (f).

(o) Authorizes a claimant whose action was dismissed under Subsection (d-1) to serve the petition and citation for any subsequently filed action for an asbestos-related or silica-related injury by certified mail, return receipt requested, or other method approved by the MDL pretrial court that is likely to accomplish service in a cost-effective manner, on a person who was a defendant in the dismissed action.

SECTION 4. (a) Provides that Section 90.010, Civil Practice and Remedies Code, as amended by this Act, applies to an action pending in the multidistrict litigation pretrial court on, or referred to the multidistrict litigation pretrial court on or after, the effective date of this Act.

(b) Provides that nothing in this Act is intended to be regarded as a decision on the merits of a dismissed action, to affect the rights of any party in a bankruptcy proceeding, or to affect the ability of any person to satisfy the claim criteria for compensable claims or demands under a trust established pursuant to a plan of reorganization under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. Section 1101 et seq.). Provides that with respect to the administrative dismissal of an action under Section 90.010(d-1), Civil

Practice and Remedies Code, as added by this Act, the tort system rights of the dismissed actions are specifically preserved.

SECTION 5. Effective date: September 1, 2013.